IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES OF AMERICA, ex rel. AJIT PAI, Chair, FEDERAL COMMUNICATIONS COMMISSION (FCC), a public, charitable trust, and a non-beneficiary, Plaintiff, Counter-Respondent v. WALTER OLENICK, and M. RAE NADLER-OLENICK, non-fiduciaries, Respondents, Counter-Plaintiffs.	§ § § § § § § § § § § § § § § § §	No. 1:18-CV-00675-LY NO CONSENT TO ARBITRATION NO CONSENT TO NON-JUDICIAL DECISION-MAKING INCLUDING MAGISTRATE PARTICIPATION

THE OLENICKS' NOTICE OF APPEAL

COME NOW WALTER OLENICK and M. RAE NADLER-OLENICK, husband and wife, THE OLENICKS, or The Olenicks, Respondents/Counter-Plaintiffs, who give their Notice of Appeal as follows:

FCC/USOA and YEAKEL got *nothing* right

Given what will prove to be the land-mark, historic nature of this matter, here's an overview of the errors committed/documented in this Record.

1. FCC/USOA never had a case.

   a. For all purposes relevant to this matter, The Olenicks are the tower

No commercial nexus

owners. That's it. That's all. They own(ed) the land on which the towers were located. *Towers* do not emit FM frequencies; therefore, *towers* are not subject to FCC authority, period.

b. For all purposes relevant to this matter, The Olenicks own(ed) the multi-family buildings on the land. The Olenicks rented a unit, and tower space, to the party(ies) who *did* control the FM programming, which was delivered through the *antenna* mounted on the tower.

c. By whatever semantics, and The Olenicks are holding fast to avoiding the "gotcha" semantics, The Olenicks never sent or controlled sending one iota of a moment's of programming on *any* frequency in the known (or unknown) FM frequency band or any *other* frequency band.

d. Sixth Plank (Communist Manifesto) policy *is* subject to enforcement within America (UNITED STATES), but only where the "target" has consented to such policy. It's the exact same as with Sharia law. For there to be the full complement of "choice of law," Sharia law *has* to be on the list of options, but *only* those who have consented to such "choice of law" are subject to it. The only reason Sharia law wouldn't be an available option is if this country were "at war" with a *nation* (not just its radical element(s), but a *nation*) that used Sharia law as its choice of law. In other words, *not* to allow/recognize Sharia law

"here" is literally to declare war against the nations that use it. "Communism," then, as a "choice of law," *has* to be recognized as an option, for we are not "at war" against any communist nation, nor are the national policies even remotely leaning away from recognizing "Communism" as a choice of law. [1] But, again, *only* those who have consented to such policies are subject to them.

e. The FCC's regulatory authority applies regarding "*use of*" a frequency. Such authority *can't* exist unless the frequency, itself, is the trust *res*. Thus, since the consent-dependent relationship subject to FCC (Sixth Plank) regulation sounds in trust, FCC/USOA never even *pled* a claim.

i. FCC/USOA never asserted facts, and, indeed, have no facts to assert, that would lead anyone to conclude that The Olenicks were fiduciaries with respect to the FCC, much less that The Olenicks **owned** the alleged trust *res*, i.e., the identified FM frequency, in trust for the benefit of FCC.

ii. Moreover, FCC/USOA never included the whole of the indispensable parties. ***All*** alleged fiduciaries *must* be included / named / Served. But,

[1] This is why there *is* a nationally declared policy *against* boycotting ISRAEL. Boycotts, if, in any remote way, appeared *supported* by national policy, then, like blockades, would constitute an act of war, and UNITED STATES cannot afford to be "at war" against the nation of ISRAEL.

(1) no prior FCC/USOA-initiated litigation regarding this frequency ever even contemplated breathing a *word* that The Olenicks were, somehow, in *any* remotely conceivable way, "owners," i.e., fiduciaries, and

(2) the prior and ***judicially confirmed*** fiduciaries, via that very same FCC/USOA-initiated litigation, regarding programming on the identified FM frequency in the Austin market, are nowhere even remotely *mentioned*, much less **included / named / Served**, as the indispensable parties they *would* be ***if*** there were the *remotest* of competence in the suit from the outset.

f. No subject matter jurisdiction – no commercial nexus.

g. No personal jurisdiction – not one shred of evidence that The Olenicks, or either of them, was in any way liable in a fiduciary capacity.

h. FCC/USOA's "suit" is nothing but a frivolous, groundless, and deliberate form of harassment, and that of the overtly *political* nature directed against Alex Jones, thus, taken out on the (wrong) parties who made available his programming in the Austin market. Confessing the political nature of this entire abuse of office/authority is the conspicuous fact that Alex Jones is (also) nowhere included /

named / Served in this suit, despite the fact *he's* the *de facto* target.

i. But, true to form in YEAKEL's "analysis" of things, The Olenicks' motion(s) to dismiss FCC/USOA facially frivolous suit were denied.

2. YEAKEL never had jurisdiction to *refer* ***any***thing.

a. The Olenicks never consented to non-judicial decision-making.

b. Moreover, the statutes specifically *prohibit* referral of dispositive matters, e.g., motions to dismiss.

c. Seeing the pattern repeated over and over, The Olenicks are of the conclusion that YEAKEL doesn't really do much. He ships everything that comes across his desk out the back door to the arbiter, i.e., the magistrate, and then, when all the work is done, "approves" whatever the arbiter did.

d. Maybe this practice is limited solely to the *pro se* cases, which are the ones with which The Olenicks are the most familiar, but adding discrimination, and compelled commerce (those with *respected* rights of non-consent, if such right *is* respected, at all, are only those who show up "represented?"), on top of compelled consent doesn't *support* the illegal practice.

e. Thing is, YEAKEL never had signature authority, i.e., "jurisdiction," to refer *any*thing in this matter. The Olenicks' never consented, ***and***

dispositive matters **may not be referred**, period. Why not? Referring dispositive matters is tantamount to putting the magistrate in the position of consented-to "*trial* judge" for the entirety of every issue in the entirety of the matter. Since this matter never progressed to trial, the issue of who would conduct that trial was never relevant.

f. Given The Olenicks' overt non-consent, accompanied by the statute's overt prohibition on referral of dispositive matters, no magistrate ever had signature authority, "jurisdiction," to participate, in any way, shape, manner, or form.

g. It's in the very context that GARY WRIGHT overtly committed very blatant perjury in his Affidavit in support of Default Judgment. Not once did WRIGHT recognize The Olenicks' non-consent to non-judicial decision-making. He bulldozed right over all that. The ways and means of magistrate-based arbitration are, apparently, as foreign to WRIGHT as to YEAKEL and the entirety of the magistrates/arbiters associated with W.D.Tex.

h. Once the illegal referral happens, and for the duration of it, the only way someone in the position of The Olenicks can preserve that non-consent position is to stop participating, except, perhaps, to continue to document the objection as is suitable for the circumstances.

i. That error, of compelled arbitration, which was/is an abuse of office

and jurisdiction, to the extent of flagrant violation of *Structural* Due Process, and which is also criminal conduct that goes by the name Sedition (Seditious conspiracy), both by YEAKEL *and* the unconsented-to magistrate, was never retracted or otherwise cured.

3. The Olenicks' Counter-claim is 100% viable.

   a. On remand, in which trial activity YEAKEL will not participate, The Olenicks will be heard regarding, and will be awarded, their damages.

4. The judgment *against* The Olenicks, then, is 100%, intentional harassment, intimidation, and/or retaliation against them for their refusal to consent,

   a. to FCC consent-based regulatory authority, generally, and then also

   b. to magistrate-based arbitration, which version of compelled consent is the court's compliment to what FCC/USOA are doing in the first place.

   c. Thus, on this Record, it's certainly appearing to be national, judicial policy that those exercising their rights not to consent are formally and officially, under color of law and office, both executive *and* judicial, harassed, intimidated, and/or retaliated against.

Notice of Appeal

The Olenicks appeal YEAKEL's October 24, 2019 "Final Default Judgment" against them along, of course, with all rulings adverse to them, to the Fifth Circuit.

Discussion

There are no Transcripts, because there were no in-person hearings.

The Olenicks request that an electronic version of the Record on Appeal be sent to them on a disk at the time the Record is delivered to the Court of Appeals. The Olenicks do not have access to PACER.

The filing fee is attached.

Submitted by,

/s/ Walt Olenick
WALTER OLENICK
P.O. Box 7468
Austin, Texas 78713

/s/ M. Rae Nadler-Olenick
M. RAE NADLER-OLENICK
P.O. Box 7468
Austin, Texas 78713

Certificate of Service

By my signature below, I certify that on or about the 19th day of November, 2019, I have served this Notice of Appeal on the following by Priority or Certified Mail:

GARY WRIGHT, AUSA
601 N.W. Loop 410, Suite 600
San Antonio, Texas 78216

Also, on or about this same date, given the flagrant abuse of office, both executive *and* judicial, including both perjury and Sedition, we have kept the following in the loop on this matter, whether by email or mail:

Hon. ORLANDO L. GARCIA, Chief J.
c/o Ms. JEANETTE CLACK, Clerk
U.S. District Court, W.D. Tex.
655 E. Cesar E. Chavez Blvd., Rm G65
San Antonio, TX 78206

Hon. WILLIAM P. BARR
Attorney General, U.S.
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Mr. JAMES C. DUFF, Director
Administrative Office, U.S. Courts
One Columbus Circle, N.E.
Washington, DC 20544

Hon. DONALD TRUMP, President
via Hon. MICK MULVANEY
Chief of Staff, White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

Hon. JOHN F. BASH
U.S. Atty., W.D. Tex.
601 NW Loop 410, Suite 600
San Antonio, TX 78216

M. Rae Nadler-Olenick

/s/ M. Rae Nadler-Olenick
M. RAE NADLER-OLENICK